IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No.948 of 1996
with
FIRST APPEAL No.949 of 1996
with
FIRST APPEAL No.951 of 1996
with
FIRST APPEAL No.952 of 1996
with
FIRST APPEAL No.954 of 1996
with
FIRST APPEAL No.955 of 1996
with
FIRST APPEAL No.957 of 1996
with
FIRST APPEAL No.960 of 1996
with
FIRST APPEAL No.962 of 1996

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT – Appellant(s)

Versus

HEMATSINGH NATVARSINGH & 4 - Defendant(s)

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Appearance :
MR LR PUJARI, ASSTT. GOVT.PLEADER for Appellant
NOTICE SERVED for Defendant(s) : 1 - 5.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT.JUSTICE ABHILASHA KUMARI

Date : 11/10/2006

ORAL JUDGMENT (Per : HON'BLE MR.JUSTICE J.M.PANCHAL)

1. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellant has challenged the legality of common judgment and award dated January 27, 1995, rendered by the learned Extra Assistant Judge, Rajkot District at Gondal in Land Acquisition Case Nos.181 of 1989 to 196 of 1989, by which, the claimants have been awarded additional compensation at the rate of Rs.120/- per Are over and above the compensation awarded to them at the rate of Rs.180/- per Are by the Special Land Acquisition Officer vide his award dated December 5, 1988, for their acquired lands.

2. The lands of the respondents and others situated at village Patiyali, Taluka: Gondal, District: Rajkot, were acquired for the public purpose of Motisar Irrigation Scheme pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on August 27, 1987. After publication of declaration made under Section 6 of the Act in the official gazette on January 14, 1988, the interested persons were served with notices for determination of compensation payable to them. The respondents and others had appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.500/- per Are. However, having regard to the materials placed before him, the Special Land Acquisition Officer, by his award dated December 5, 1988, offered compensation to the claimants at the rate of Rs.180/- per Are. Thereupon, the claimants had sought References and the Reference Court, by judgment and award dated January 27, 1995, has awarded additional compensation to the claimants at the rate of

Rs.120/- per Are giving rise to the abovenumbered Appeals.

3. This Court has heard Mr.L.R.Pujari, learned Assistant Government Pleader for the appellant. Though the respondents are duly served in each Appeal, they have neither appeared through their lawyer nor any of them has appeared in-person. The Court has taken into consideration the evidence adduced by the parties before the Reference Court.

4. It may be mentioned that determination of compensation payable to the claimants at the rate of Rs.300/- per Are in all has been confirmed by the Division Bench of this Court (Coram: Y.B.Bhatt & C.K.Buch, JJ.), vide judgment dated March 23, 1998, rendered in First Appeal Nos.953 of 1996 and 963 of 1996, filed against the judgment and award rendered in two reference cases which formed part of the present group of reference cases decided by the Reference Court on January 27, 1995. The record does not indicate that the judgment rendered by

the Division Bench of this Court on March 23, 1998, in First Appeal Nos.953 of 1996 and 963 of 1996 was challenged by the appellant before the higher forum. Thus, there is no manner of doubt that the said judgment has been accepted by the appellant. In view of the said judgment, the award of the Reference Court awarding compensation to the respondents at the rate of Rs.300/- per Are cannot be interfered with and deserves to be confirmed by this Court. However, it is noticed by the Court that over and above awarding compensation to the respondents at the rate of Rs.300/- per Are for acquisition of their agricultural lands, the Reference Court has also awarded compensation to them for the Wells which were situated in the respective fields. It is well settled that since estimated construction costs of irrigation wells of agricultural lands cannot form the basis for awarding compensation for such irrigation wells independently of the compensation awardable for the agricultural lands for the benefit of which such Wells existed, the claim for grant of

enhanced compensation for the irrigation Wells with reference to estimated costs of construction of such Wells could not have been entertained. In *O.Janardhan Reddy and others v. Special Dy. Collector, L.A. Unit-IV, LMD, Karimnagar, A.P. and others – JT 1995(6) SC 366* the Supreme Court has ruled that when the agricultural land, the irrigation of which was possible from the water of the irrigation Well, is acquired, the value of the land so acquired will have to be determined taking into consideration the irrigation facility it had from the Well and in such a situation, the irrigation Well in an acquired agricultural land cannot have a value apart from the value of the agricultural land itself. In view of the principle laid down by the Supreme Court in the abovequoted decision, this Court is of the opinion that the Reference Court was not justified in awarding separate compensation to the claimants for the Wells also. Therefore, the Appeals will have to be allowed in part by holding that the respondents would not be

entitled to compensation for the Wells which were situated in their agricultural lands.

5. For the foregoing reasons, all the Appeals partly succeed. The judgment and award dated January 27, 1995, rendered by the learned Extra Assistant Judge, Rajkot District at Gondal in Land Acquisition Case Nos.181/1989, 182/1989, 184/1989, 185/1989, 187/1989, 188/1989, 190/1989, 193/1989 and 195/1989, awarding compensation to the claimants at the rate of Rs.300/- per Are for their acquired lands is hereby upheld. However, the compensation awarded to the respondents for Wells at the rate of Rs.5,000/- is hereby set aside. The Appeals are allowed to the extent indicated hereinabove. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment as early as possible.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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